

FILED	
CLERK, U.S. DISTRICT COURT	
February 13, 2015	
CENTRAL DISTRICT OF CALIFORNIA	
BY: KH	DEPUTY

I HEREBY CERTIFY THAT THIS DOCUMENT WAS SERVED BY FIRST CLASS MAIL, POSTAGE PREPAID, TO (SEE BELOW) AT THEIR RESPECTIVE MOST RECENT ADDRESS OF RECORD IN THIS ACTION ON THIS DATE		
TO:	DATE:	DEPUTY CLERK:
Petitioner	2/13/15	klh

CV69 also mailed

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

MAURICE WALKER,	)	Case No. CV 15-0951-MMM (RNB)
Petitioner,	)	
vs.	)	ORDER DISMISSING PETITION WITH
	)	LEAVE TO AMEND
THE PEOPLE OF THE STATE	)	
OF CALIFORNIA,	)	
Respondent.	)	

Petitioner, who currently is confined at California State Prison-Los Angeles County in Lancaster, filed a Petition for Writ of Habeas Corpus by a Person in State Custody herein on February 10, 2015. The Petition purports to be directed to a 2012 judgment of conviction sustained by petitioner in Los Angeles County Superior Court Case No. BA398731.

The Court's review of the Petition reveals that it suffers from the following deficiencies.

1. The Petition improperly names the People of the State of California as the respondent. The People of the State of California is not a proper party in this proceeding. The only appropriate respondent is petitioner's immediate custodian at his current place of confinement. See Rumsfeld v. Padilla, 542 U.S. 426, 434-35, 124 S. Ct. 2711, 159 L.

1 Ed. 2d 513 (2004); see also 28 U.S.C. § 2242; Rule 2(a) of the Rules  
2 Governing Section 2254 Cases in the United States District Courts and  
3 the Advisory Committee Notes thereto; Hogan v. Hanks, 97 F.3d 189,  
4 190 (7th Cir. 1996), cert. denied, 520 U.S. 1171 (1997).

5 2. The Petition has not been submitted on either the national  
6 form appended to the Habeas Rules or the form currently approved and  
7 supplied by the Central District of California for habeas petitions  
8 brought by prisoners in state custody. See Rule 2(d) of the Rules  
9 Governing Section 2254 Cases in the United States District Courts  
10 (authorizing the District Court by Local Rule to require that habeas  
11 petitions be filed in a form prescribed by the Local Rule); see also  
12 Central District of California Local Rule 83-16.1. Instead, the Petition  
13 was improperly submitted on a habeas form that has not been in effect  
14 for several years.

15 3. Petitioner checked off the “No” box in response to the  
16 question asking whether, other than a direct appeal, he previously had  
17 filed any petitions, applications or motions with respect to his conviction  
18 in any court, state or federal. However, petitioner attached to the  
19 Petition a copy of a California Supreme Court order denying a habeas  
20 petition he had filed. Moreover, it appears from the California Appellate  
21 Courts website that petitioner filed three habeas petitions in the  
22 California Court of Appeal relating to his conviction and/or sentence in  
23 Los Angeles County Superior Court Case No. BA398731. Thus, it is  
24 clear that the Petition has not been properly or completely filled out by  
25 petitioner.

26 4. Under 28 U.S.C. § 2254(a), petitioner may only seek habeas  
27 relief from a state court conviction or sentence if he is contending that  
28 he is in custody in violation of the Constitution or laws or treaties of the

United States. See Estelle v. McGuire, 502 U.S. 62, 67-68, 112 S. Ct. 475, 116 L. Ed. 2d 385 (1991) (“In conducting habeas review, a federal court is limited to deciding whether a conviction violated the Constitution, laws, or treaties of the United States.”); Smith v. Phillips, 455 U.S. 209, 221, 102 S. Ct. 940, 71 L. Ed. 2d 78 (1982) (“A federally issued writ of habeas corpus, of course, reaches only convictions obtained in violation of some provision of the United States Constitution.”). Here, Grounds one, three, and four are not framed as federal constitutional claims. Moreover, to the extent petitioner appears to be claiming that his sentence was imposed in violation of California law, such claim is not cognizable on federal habeas review because it involves solely the interpretation and/or application of state sentencing law. See, e.g., Christian v. Rhode, 41 F.3d 461, 469 (9th Cir. 1994); Cacoperdo v. Demosthenes, 37 F.3d 504, 507 (9th Cir.), cert. denied, 514 U.S. 1026 (1995); Hendricks v. Zenon, 993 F.2d 664, 674 (9th Cir. 1993); Watts v. Bonneville, 879 F.2d 685, 687 (9th Cir. 1989); Miller v. Vasquez, 868 F.2d 1116, 1118-19 (9th Cir. 1989). Finally, although petitioner appears to be contending in his accompanying memorandum of points and authorities that he received ineffective assistance of both trial counsel and appellate counsel, he did not separately allege any ineffective assistance of counsel claims in the grounds for relief section of the Petition.

5. Under 28 U.S.C. § 2254(b), habeas relief may not be granted unless petitioner has exhausted the remedies available in the courts of the State.<sup>1</sup> Exhaustion requires that the prisoner’s contentions

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<sup>1</sup> The habeas statute now explicitly provides that a habeas petition brought (continued...)

1 be fairly presented to the state courts, and be disposed of on the merits  
 2 by the highest court of the state. See James v. Borg, 24 F.3d 20, 24 (9th  
 3 Cir.), cert. denied, 513 U.S. 935 (1994); Carothers v. Rhay, 594 F.2d  
 4 225, 228 (9th Cir. 1979). Moreover, a claim has not been fairly  
 5 presented unless the prisoner has described in the state court  
 6 proceedings both the operative facts and the federal legal theory on  
 7 which his claim is based. See Duncan v. Henry, 513 U.S. 364, 365-66,  
 8 115 S. Ct. 887, 130 L. Ed. 2d 865 (1995); Picard v. Connor, 404 U.S.  
 9 270, 275-78, 92 S. Ct. 509, 30 L. Ed. 2d 438 (1971); Davis v. Silva, 511  
 10 F.3d 1005, 1009 (9th Cir. 2008). As a matter of comity, a federal court  
 11 will not entertain a habeas corpus petition unless the petitioner has  
 12 exhausted the available state judicial remedies on every ground  
 13 presented in the petition. Rose v. Lundy, 455 U.S. 509, 518-22, 102 S.  
 14 Ct. 1198, 71 L. Ed. 2d 179 (1982). Petitioner has the burden of  
 15 demonstrating that he has exhausted available state remedies. See, e.g.,  
 16 Brown v. Cuyler, 669 F.2d 155, 158 (3d Cir. 1982). Here, petitioner has  
 17 not met this burden because he did not list any California Supreme  
 18 Court filings in ¶ 7 of the Petition or attach to the Petition a copy of his  
 19 California Supreme Court habeas petition.

20 6. Petitioner failed to sign and date the Petition on page 7.  
 21 Thus, the Petition is not properly verified, as required by 28 U.S.C. §  
 22 2242, Rule 2(c) of the Rules Governing Section 2254 Cases in the  
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24 <sup>1</sup>(...continued)

25 by a person in state custody “shall not be granted unless it appears that-- (A) the  
 26 applicant has exhausted the remedies available in the courts of the State; or (B)(i)  
 27 there is an absence of available State corrective process; or (ii) circumstances exist  
 28 that render such process ineffective to protect the rights of the applicant.” 28 U.S.C.  
 § 2254(b)(1).

1 United States District Courts. See also Central District of California  
2 Local Rule 83-16.2.

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4 For the foregoing reasons, the Petition is dismissed with leave to amend. If  
5 petitioner still desires to pursue this action, he is ORDERED to file an amended  
6 petition rectifying the deficiencies discussed above on or before **March 23, 2015**.  
7 The clerk is directed to send petitioner a blank Central District habeas petition form  
8 for this purpose.

9 The amended petition should reflect the same case number, be clearly labeled  
10 “First Amended Petition,” and be filled out completely. In ¶ 8 of the First Amended  
11 Petition, petitioner should specify **separately and concisely** each federal  
12 constitutional claim that he seeks to raise herein and answer all of the questions  
13 pertaining to each such claim. (If petitioner attaches a supporting memorandum of  
14 points and authorities, the arguments therein should correspond to the claims listed  
15 in ¶ 8 of the habeas petition form and not include any additional claims.) If petitioner  
16 contends that he exhausted his state remedies in a Petition for Review to the  
17 California Supreme Court, he should list such filing in ¶ 4 of the habeas petition form  
18 and provide all of the other called for information. If petitioner contends that he  
19 exhausted his state remedies in a habeas petition to the California Supreme Court, he  
20 should list such filing in ¶ 6 of the habeas petition form and provide all of the other  
21 called for information. For each filing listed in ¶¶ 4 and 6, petitioner should be sure  
22 to specify all of the grounds raised by him in such filing, along with the case number,  
23 the date of decision, and the result.

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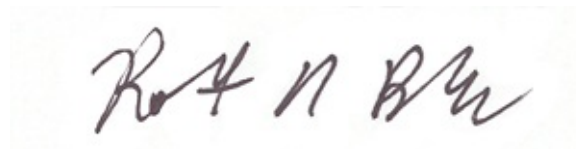
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1 Finally, petitioner is cautioned that his failure to timely file a First Amended  
2 Petition in compliance with this Order will result in a recommendation that this action  
3 be dismissed without prejudice for failure to prosecute.  
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5 DATED: February 13, 2015  
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A handwritten signature in dark ink, appearing to read "Robert N. Block", is written over a light-colored rectangular background.

8 ROBERT N. BLOCK  
9 UNITED STATES MAGISTRATE JUDGE  
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